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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL STUART MEEKINS,

Defendant and Appellant.

A122719

(Sonoma County  
Super. Ct. No. SCR-530784

In this appeal from a guilty plea defendant claims that the six-year sentence imposed upon him was the result of a clerical error or mistake of fact by the trial court, and should be corrected to reflect a five-year term. Upon review of the record we conclude that the six-year sentence was intended by the trial court and properly within the terms of the plea agreement. We therefore affirm the judgment.

**STATEMENT OF FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

Defendant was charged by complaint with possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)),<sup>2</sup> unlawful possession of ammunition (§ 12316, subd. (b)(1)), carrying a concealed firearm in a vehicle (§ 12025, subd. (a)(1)), a prior strike conviction (§ 1170.12), and four prior prison terms served (§ 667.5 subd. (b)). A series of plea and sentencing proceedings then ensued.

<sup>1</sup> In light of defendant's plea and the issues presented on appeal we need not recite the facts pertinent to the underlying charges.

<sup>2</sup> All further statutory references are to the Penal Code.

On April 9, 2008, when defendant appeared for a preliminary hearing readiness conference, his counsel indicated that two plea offers had been discussed by the parties. The prosecutor then recited for the court the two plea “offers” open to defendant: the first, a plea to possession of a firearm by a felon as charged in Count 1, with a stipulation to a middle term of two years, admission of a strike and one of the four charged prior prison terms, for an aggregate state prison sentence of “five years total,” along with a further stipulation that defendant would “not be filing a *Romero* motion” to dismiss the charged strike;<sup>3</sup> the second, an “open plea” to Count 1 and admission of the strike and two of the four prior prison terms, which “expose[d] him to eight years,” but granted him the opportunity to proceed with “a *Romero* motion” to dismiss the strike. Defendant agreed to waive the preliminary hearing under either option.

Defendant next appeared with his attorney on April 22, 2008, to enter a “guilty plea to Count 1,” admit the prior strike conviction, and admit two of the prior prison terms, as specified in a change of plea form filed with the court. The court reiterated to defendant that, “This is an open plea” without any “guarantees as to sentencing at this point,” and exposed him to a minimum sentence of 32 months and a maximum “total exposure” of eight years in state prison. Defendant stated that he understood the consequences of the plea and the constitutional rights he waived by entry of the plea. The court accepted the plea.

Defendant subsequently filed a motion pursuant to section 1385 to dismiss the prior strike conviction. The hearing on defendant’s request to dismiss the strike and for “possible sentencing” occurred on August 5, 2008. Defense counsel noted for the court that defendant had been offered a “*six-year* stipulated term,” but instead “flipped the dice and exposed himself to eight years, instead of six,” to present the *Romero* motion. (Italics added.) Defense counsel then argued for dismissal of prior strike conviction and imposition of the “maximum sentence” of “five years,” which was “[o]ne year less” than the prosecution’s offer that was not accepted. The court denied the *Romero* motion and

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<sup>3</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

proceeded with sentencing. The court indicated that the “original offer by the prosecution, the six years,” would be imposed, whereupon both the defense and the prosecution submitted the matter.<sup>4</sup>

## DISCUSSION

### *I. The Imposition of a Six-Year Sentence on Defendant.*

Defendant complains that the imposition of a six-year sentence upon him was a “clerical error” or “mistake of fact.” He points out that the trial court pronounced its intention to sentence him pursuant to the “original offer.” Then, asserts defendant, due to a “mistaken belief that the original offer was six years and not five as had [been] originally contemplated and placed on the record, the court imposed a six year prison sentence.” He therefore requests that we either “correct the error” in the judgment to “accurately reflect the intention of the sentencing court” to impose a five-year term, or remand the case “to the trial court [to] exercise its judicial discretion based upon the correct understanding of the original offer by the prosecution.” The Attorney General responds that the judgment does not reflect a clerical error, but submits that the court’s sentencing “intent is unclear,” and “remand is appropriate to allow the trial court to exercise its judicial discretion.” We do not agree that a remand is necessary in this case.

First, there is no clerical error in the record that is subject to correction. “ ‘It is not open to question that a court has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts. [Citations.] The power exists independently of statute and may be exercised in criminal as well as in civil cases. . . .’ [Citation.]” (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) The court cannot, “ ‘however, change an order which has become final even though made in error, if in fact the order made was that intended to be made.’ [Citation.]” (*Bell v. Farmers Ins. Exchange* (2006) 135 Cal.App.4th 1138, 1144.) “[J]udicial error ‘which occurs in the rendition of orders or judgments which are the fault of judicial discretion, as opposed to clerical error or inadvertence, may not be corrected except by statutory procedure.’

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<sup>4</sup> Defense counsel stated that upon denial of the *Romero* motion his argument was for the court to impose “the original offer of . . . six years.”

([*Smith v. Superior Court* (1981) 115 Cal.App.3d 285,] 289 [171 Cal.Rptr. 387]; see also *People v. McGee* (1991) 232 Cal.App.3d 620, 624 [283 Cal.Rptr. 528] [‘Clerical error must be distinguished from judicial error, which cannot be corrected once final.’].) An order is clearly ‘ “judicial” ’ if the trial court entered the order it intended. (*Smith, supra*, at p. 291.) ‘ “Generally, a clerical error is one inadvertently made, while a judicial error is one made advertently in the exercise of judgment or discretion. [Citations.]” ’ (*People v. McGee, supra*, at p. 624.) ‘ “An amendment that substantially modifies the original judgment or materially alters the rights of the parties, may not be made by the court under its authority to correct clerical error . . . .” ’ (*Smith, supra*, at p. 290.)” (*People v. Davidson* (2008) 159 Cal.App.4th 205, 210.) Here, the trial court intended to impose a six-year rather than five-year term – calculated as the middle term of two years for the felon in possession of a firearm conviction, doubled for the prior strike, with the addition of one year each for the two prior prison terms – and so stated with clarity. The abstract of judgment accurately reflects the oral pronouncement of sentence. There is no inadvertent error in the entry of judgment to correct. “Unless the challenged portion of the judgment was entered inadvertently, it cannot be changed post judgment under the guise of correction of clerical error.” (*Tokio Marine & Fire Ins. Corp. v. Western Pacific Roofing Corp.* (1999) 75 Cal.App.4th 110, 117.)

The remaining inquiry for us to undertake is to determine whether the trial court’s sentencing decision lacks adequate clarity or was based on a mistake of fact, such that it conflicts with the negotiated disposition. To do so, we must construe the intent of the parties and the trial court as manifested in the language of the offers, the plea agreement, and the resulting judgment. “ ‘A negotiated plea agreement is a form of contract, and it is interpreted according to general contract principles. [Citations.] “The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. [Citation.] If contractual language is clear and explicit, it governs. [Citation.] On the other hand, ‘[i]f the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.’ [Citations.]” [Citation.] “The mutual intention to which the

courts give effect is determined by objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties. [Citations.]" [Citations.]" [Citation.]" (*People v. Rabanales* (2008) 168 Cal.App.4th 494, 502–503.) To resolve any ambiguity in the agreement or the trial court's decision " 'we consider the circumstances under which this term of the plea agreement was made, and the matter to which it relates [citation] to determine the sense in which the prosecutor and the trial court (the promisors) believed, at the time of making it, that defendant (the promisee) understood it [citation].' [Citation.]" (*Id.* at p. 506.)

When defendant waived his right to a preliminary hearing on April 9, 2008, he was concurrently presented with two offers to consider by the prosecution: one promised a set five-year term but foreclosed defendant from pursuing a *Romero* motion; the second preserved defendant's right to seek dismissal of the prior strike conviction – and thus prevent the doubling of the base term – but left the plea "open," with a maximum possible eight-year term. At the change of plea hearing on April 22, 2008, defendant explicitly chose the open plea option of the two offers. The terms of the plea agreement, as indicated in the change of plea form and at the hearing, were clear: an open plea, no specified term, admission of *two* prior prison terms, and an eight-year maximum sentence. Defendant confirmed his choice by subsequently filing his motion to dismiss the prior strike conviction.

Thus, by the time defendant appeared for the hearing on his *Romero* motion and for sentencing on August 5, 2008, the offer that contemplated a set five-year sentence was no longer extant; it had been declined by defendant in favor of the other original offer that subjected him to a prison term of between 32 months and eight years, but allowed him to seek dismissal of his prior strike conviction. Even defense counsel acknowledged that the "stipulated term" offer had been rejected and defendant "exposed himself to eight years."

We recognize that some ambiguity is reflected in the record by the trial court's statement of intent to sentence defendant in accordance with the "*original offer* by the prosecution, the *six years*."<sup>5</sup> (Italics added.) In fact, *two* original offers had been concomitantly made to defendant by the prosecution, and one of them promised defendant no more than a five-year term. Even so, we do not find the plea agreement or the trial court's pronouncement of sentence so hopelessly confusing that we are unable to definitively perceive the trial court's intent and sentencing choice. Defendant cannot accept the benefits of the plea agreement that authorized him to pursue his *Romero* motion in an effort to reduce his sentence, then claim that the five-year sentence option remained open. Upon defendant's rejection of the five-year stipulated sentence option, that offer was extinguished, and only the other, open-plea offer that resulted in the plea agreement remained. Thus, the trial court's statement of intent to sentence defendant in accordance with the "*original offer*" must be reasonably construed to refer to the only one of the two original offers that had been accepted by him and remained operative. (Italics added.) That offer did not delineate a five-year term, but rather granted the court discretion to impose a sentence of up to eight years in prison. Within that framework, the court clearly chose a six-year term. We interpret the trial court's remark to mean that defendant would receive a six-year sentence in accordance with the terms of the *original offer he accepted*. Under the circumstances presented, that is the only common-sense interpretation of the plea agreement and the judgment pronounced by the trial court that gives effect to the mutual intent of the parties. The plea agreement that bound the parties did not mandate, nor did the sentencing court ever mention, that defendant would receive a five-year term. The court's intent to impose a six-year term is also indicated by the calculation undertaken to arrive at the aggregate sentence, which was consistent with the terms of the plea agreement rather than the rejected five-year offer: the middle term of

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<sup>5</sup> The genesis of the confusion may have been defense counsel's erroneous comment that defendant rejected the offer for a "*six-year stipulated term*."

two years, doubled, and *two one-year enhancements* for the prior prison terms.<sup>6</sup> Upon our review of the entirety of the record, we have no doubt that the trial court intended to and did impose a six-year aggregate sentence upon defendant. We find no mistake of fact, and do not discern any reason to return the case to the trial court to clarify the judgment.

Further, the six-year term was authorized by law and the plea agreement. “ ‘When a guilty [or nolo contendere] plea is entered in exchange for specified benefits such as the dismissal of other counts or an agreed maximum punishment, both parties, including the state, must abide by the terms of the agreement.’ [Citations.]” (*People v. Panizzon* (1996) 13 Cal.4th 68, 80.) “Under section 1192.5, if a plea agreement is accepted by the prosecution and approved by the court, the defendant ‘cannot be sentenced on the plea to a punishment more severe than that specified in the plea . . . .’ The statute further provides that if the court subsequently withdraws its approval of the plea agreement, ‘the defendant shall be permitted to withdraw his or her plea if he or she desires to do so.’ [Citations.]” (*People v. Masloski* (2001) 25 Cal.4th 1212, 1217, fn. omitted.) Here, defendant expressly agreed to the increased six-year sentence as part of his plea bargain, so he cannot complain that the court exceeded its jurisdiction by imposing a sentence within the range specified in the agreement. (See *People v. Hester* (2000) 22 Cal.4th 290, 295; *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1428.)

## ***II. The Claim of Inadequate Assistance of Counsel.***

Defendant also argues that his trial attorney “breached the duty to provide effective representation” by failing to “correctly state or clarify that the original offer had been five years,” not six years as imposed by the trial court. Defendant adds that there is “no rational or strategic basis” or justification for his attorney’s neglect to “take any steps to correct the mistaken belief the offer had been six years rather than five.”

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<sup>6</sup> We observe that if the court had intended to sentence defendant under the rejected five-year stipulated sentence offer, only a single one-year enhancement for a prior prison term could have been added to the sentence. Instead, pursuant to defendant’s plea, the court was mandated to impose two consecutive one-year terms for the two prior prison terms admitted. (§ 667.5, subd. (b); *People v. White Eagle* (1996) 48 Cal.App.4th 1511, 1521.)

The principles that govern defendant's claim of "constitutionally inadequate representation are settled." (*In re Lucas* (2004) 33 Cal.4th 682, 721.) "To establish a claim of inadequate assistance, a defendant must show counsel's representation was 'deficient' in that it 'fell below an objective standard of reasonableness . . . under prevailing professional norms.' [Citations.] In addition, a defendant is required to show he or she was prejudiced by counsel's deficient representation. [Citations.] In determining prejudice, we inquire whether there is a reasonable probability that, but for counsel's deficiencies, the result would have been more favorable to the defendant." (*People v. Frye* (1998) 18 Cal.4th 894, 979.) "A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*People v. Williams* (1997) 16 Cal.4th 153, 215; see also *In re Jones* (1996) 13 Cal.4th 552, 561.) Further, " 'When . . . the record sheds no light on why counsel acted or failed to act in the manner challenged, the reviewing court should not speculate as to counsel's reasons. . . . Because the appellate record ordinarily does not show the reasons for defense counsel's actions or omissions, a claim of ineffective assistance of counsel should generally be made in a petition for writ of habeas corpus, not on appeal.' [Citation.]" (*People v. Lucero* (2000) 23 Cal.4th 692, 728–729.)

We find that defendant has failed to establish any prejudicial incompetence of counsel in this appeal. As we have observed, the trial court did not operate under a mistake of fact in sentencing defendant. When defendant was sentenced, the original five-year offer was no longer valid. Sentence was imposed under the alternate original offer that was accepted by defendant and authorized a sentence of up to eight years. Pointing out to the court that the rejected offer had a five-year term limit was of no consequence to the sentence imposed and would not have been fruitful to the defense. Counsel cannot be found ineffective for failing to present a futile objection to the court. (See *People v. Gutierrez* (2009) 45 Cal.4th 789, 804–805; *People v. Memro* (1995) 11 Cal.4th 786, 834.)

Accordingly, the judgment is affirmed.



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Dondero, J.

We concur:

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Margulies, Acting P. J.

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Banke, J.